

 ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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JUN 14 2016

**SC SUPREME COURT**

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Certiorari to Charleston County

Roger E. Henderson, Circuit Court Judge  
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QUENTIN JENKINS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002181  
\_\_\_\_\_

PETITION FOR WRIT OF CERTIORARI  
\_\_\_\_\_

KATHRINE H. HUDGINS  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
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ATTORNEY FOR PETITIONER

## INDEX

INDEX .....	1
ISSUE PRESENTED .....	2
STATEMENT .....	3
ARGUMENT .....	5
CONCLUSION .....	6

**ISSUE PRESENTED**

Did the PCR judge correctly find that Petitioner did not knowingly and intelligently waive the right to appeal the denial of relief and dismissal of his first post conviction relief application and was entitled to a belated direct appeal pursuant to Austin v. State?

## STATEMENT

In April of 2007, the Charleston County Grand Jury indicted Petitioner Jenkins for two counts of murder and two counts of possession of a firearm during the commission of a violent crime, indictments #2007-GS-10-4660, 4661, 4662, 4663. On February 4, 2008, Petitioner proceeded to jury trial before the Honorable Deadra L. Jefferson. William Runyon represented Petitioner at trial. Nathan Williams and Kim Steele prosecuted the case. The jury found Petitioner guilty as charged. Judge Jefferson sentenced petitioner to forty (40) years concurrent for each count of murder and five (5) years concurrent for each weapon charge. A timely notice of intent to appeal was filed and the direct appeal perfected. Joseph L. Savitz, III, represented Petitioner on appeal and filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967). On February 24, 2010 the South Carolina Court of appeals dismissed the appeal. State v. Jenkins, Op. No. 2010-UP-147 (S.C.Ct.App. filed February 24, 2010).

On October 27, 2010, Petitioner filed an application for post conviction relief [PCR], 2010-CP-10-8981. The State filed a return on February 10, 2011. On November 18, 2011, an evidentiary PCR hearing was held before the Honorable Kristi Harrington. Mark Peper represented Petitioner at the PCR hearing. Matthew J. Friedman represented the State. In a written order signed December 16, 2011, Judge Harrington denied relief and dismissed the application. On October 12, 2012, Petitioner filed a *pro se* petition for a belated writ of certiorari. October 23, 2012, counsel for Petitioner filed an untimely notice of intent to appeal. On November 5, 2012, the South Carolina Supreme Court dismissed the notice of intent to appeal noting that the dismissal was without prejudice to the right Petitioner may have to seek relief pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

On December 7, 2012, Petitioner filed a second application for post conviction relief, 2012-CP-10-7980. On June 6, 2013, Petitioner filed an amended second application for post conviction relief. On January 30, 2015, the State filed a return and partial motion to dismiss. On February 6, 2015, the Honorable R. Markley Dennis signed a conditional order of dismissal, dismissing in part and ordering a hearing solely on the issue of a belated Austin appeal. On July 20, 2015, an evidentiary PCR hearing was held before the Honorable Roger E. Henderson. Rodney D. Davis represented Petitioner at the PCR hearing. J. Rutledge Johnson represented the State. In an order signed August 20, 2015, Judge Henderson found that Petitioner was entitled to a belated appeal of his first denial of post conviction relief pursuant to Austin v. State but denied all other grounds. A timely notice of intent to appeal was served on October 16, 2015. On November 25, 2015, Judge Henderson signed an amended order which omitted an erroneous reference to White v. State, 263 S.C.110, 108 S.E.2d 35 (1974) included in the original order. This petition for writ of certiorari and a separately filed Austin petition follow.

## ARGUMENT

The PCR judge correctly found that Petitioner did not knowingly and intelligently waive the right to appeal the denial of relief and dismissal of his first post conviction relief application and was entitled to a belated direct appeal pursuant to Austin v. State.

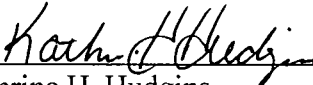
Petitioner's first PCR counsel filed the notice of intent to appeal the denial of relief and dismissal of his first post conviction relief application on October 23, 2012, ten months after the first PCR judge signed the order of dismissal. On November 5, 2012, the South Carolina Supreme Court dismissed the notice of intent to appeal as untimely but noted that the dismissal was without prejudice to the right Petitioner may have to seek relief pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

During the second PCR hearing the State did not contest the fact that Petitioner was entitled to a belated appeal pursuant to Austin v. State. (App. p. 963, lines 15-21). The PCR judge correctly found that Petitioner did not knowingly and intelligently waive the right to appeal the denial of relief and dismissal of his first post conviction relief application and was entitled to a belated direct appeal pursuant to Austin v. State.

**CONCLUSION**

Based on the above argument this Court should grant the belated appeal pursuant to Austin  
v. State.

Respectfully submitted,

  
\_\_\_\_\_  
Kathrine H. Hudgins  
Appellate Defender

ATTORNEY FOR PETITIONER

This 14<sup>th</sup> day of June, 2016.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Charleston County  
Roger E. Henderson, Circuit Court Judge

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QUENTIN JENKINS,

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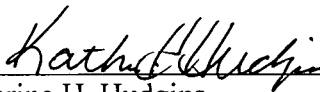
APPELLATE CASE NO. 2015-002181

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CERTIFICATE OF SERVICE

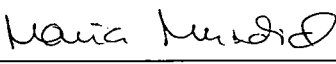
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I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on J. Rutledge Johnson, Esquire at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 14<sup>th</sup> day of June, 2016.

  
Kathrine H. Hudgins  
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 14th day  
of June, 2016.

 (L.S.)  
Notary Public for South Carolina  
My Commission Expires: July 3, 2023.